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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,684	03/07/2001	Albert D. Baker	23-2	5046
7590 06/23/2005			EXAMINER	
Ryan, Mason & Lewis, LLP			KHUONG, LEE T	
90 Forest Avenue				
Locust Valley, NY 11560			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/800,684

Applicant(s)

BAKER ET AL.

Examiner

Lee Khuong

Art Unit

2665

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

**ALPUS H. HSU
PRIMARY EXAMINER**

Continuation of the item 11:

Regarding to independent claims 1, 8, 15 and 16, in response to applicant's argument that was received on 6/1/2005, on page 2, lines 27-30, for the limitations (i) and (ii). Applicant stated that Itoh fails to teach the limitations (i) and (ii). Examiner disagree and would like to direct applicant attention to the final office action for the independent claims 1, 8, 15 and 16 and also Itoh, col. 4, lines 6-10 and col. 4, line 57 - col. 5, line 3, a message received from a Terminal A (equivalent to the second device of the applicant) and compared to in a memory unit 60 of the ATM switch (equivalent to the first device of the applicant) for UNI identification information (UNI protocol version) that should satisfy the limitation (i) and (ii).

In response to applicant's argument on page 3, lines 6-10,

"The synchronization of firmware of a second device with firmware of a first device as described in Northcutt, differs significantly from the updating of a message protocol version associated with a second device in a memory of a first device, as described in the independent claims of the present invention. Firmware is not updated in the first and second device of the independent claims of the present invention."

examiner would like to direct applicant's attention to Northcutt, col. 1, lines 44-51 and col. 5, lines 31-49, Northcutt clearly teaches a server and a client computer need to have a same protocol version/firmware version in order to communicate with each other.

In response to applicant's argument on that no motivation exists to combine Itoh and Northcutt, examiner disagree. Northcutt does state a motivation for updating to the same protocol version on the second device with the protocol version of the first device, please see Northcutt, col. 1, lines 32-42. In addition to that, it is well known to a person with ordinary skill in the art that it is required that two devices must have a same protocol standard in order to communicate with each other. Furthermore, it is commonly known that two devices need to have the same version to communicate with each other properly as indicated in Itoh, col. 5, lines 15-29 and Northcutt, col. 1, lines 32-42. Itoh and Northcutt's applications both teach the same concept of a need for providing a same protocol version in order to provide proper communication between two devices. Therefore, they are obvious and combinable with each other.

Respectfully submitted,

By: 

Lee T. Khuong
Patent Examiner
May 5th, 2005